IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 140/2005
WITH CRIMINAL MISC. APPLICATION NO. 141/2005.

Criminal Misc. Application No.140/2005.

Mr. Bernard @ Bhendo Cardozo,
presently at Sub Jail,
Sada, Vasco da Gama, Goa. .... Petitioner.

Versus

S T A T E. .... Respondent.

Criminal Misc. Application No. 141/2005.

Mr. Alex Fernandes,
presently at Sub Jail,
Sada, Vasco da Gama, Goa. ... Petitioner.

Versus

S T A T E. ... Respondent.

Shri Arun Bras de Sa, Advocate for the Petitioners.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 17th August, 2005.

ORAL ORDER:

The applicants/petitioners herein were accused in Sessions Case No.11/2002 who have been convicted and sentenced by the learned Addl.

Sessions Judge, Margao vide Judgment/Order dated 27.7.05 and who by the present applications seek suspension of the said Judgment/Order and release on bail pending the hearing of the appeals filed by them.

2. The accused No.1 Alex Fernandes has been convicted and sentenced under Section 392 I.P.C. to undergo four years R.I. and to pay a fine of Rs.2000/- and in default to undergo S.I. for three months. Accused No.2 Bernard alias Bhendo Carodzo has been convicted and sentenced under S.392 r/w S.397 I.P.C. to undergo 7 years R.I. And to pay a fine of Rs.2000/- and in default to undergo S.I. for three months. It is stated on behalf of the said accused that accused Alex Fernandes has already undergone imprisonment for a period of one year and three months, while accused Bernard Cardozo has undergone imprisonment for one year and two months.

3. There is no dispute that during the trial of Sessions Case No. 11/02 all the accused were on bail and it is stated that the trial itself took about three years to complete. The suspension of sentence and/or granting of bail to the aforesaid accused has been opposed on behalf of the respondent by submitting that both the accused are history sheeters and have been convicted for offences which are serious in nature. It is also stated that another accused absconded when the said Sessions Case was fixed at the

stage of hearing the accused on the point of sentence. These factors, according to the learned P.P. are exceptional in nature which are bound to come in the way of the aforesaid accused being released on bail.

4. Reliance has been placed by Shri Sardessai the learned P.P. on several cases, the case of ***Bhagwan Rama Shinde & Others v. State of Gujarat [(1999) 4 S.C.C. 421]*** being one of them.

5. In the above case it has been stated by the Apex Court that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances. The Apex Court has also stated that when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence is of limited duration it cannot be suspended. Every endeavour should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases. Based on the aforesaid observations, Shri Sardessai also submits that the applications for suspension of sentence/for bail be rejected and the appeals be expedited.

6. In the reply filed on behalf of the respondent, it has also been stated

that during the trial of the said Sessions Case, the accused Bernard Cardozo had threatened the prosecution witnesses, a fact which has been denied by the accused by filing affidavit-in-rejoinder. It is to be noted that in case any witness was threatened by the accused, it is seen that no action was taken against the said accused by moving the Sessions Court for cancellation of his bail and even now by filing an affidavit of the witness who was allegedly threatened and therefore this factor, in my view, cannot be taken against the said accused Bernard Cardozo. There is no dispute, as already stated, that both the accused enjoyed their liberty being on bail during the pendency of the trial against them and that too for a period of about three years, as stated on behalf of the said accused by Shri Bras de Sa, which fact has not been contested on behalf of the respondent by Shri Sardessai, the learned P.P. There is also no dispute that during the said period while the accused were on bail they were not involved in any Criminal Case. Although it was stated on behalf of the respondent that accused Bernard Cardozo was involved in two criminal cases of Colva Police Station, no details of the same have been given. The accused has filed an affidavit denying the said fact. In the absence of details, it could not be accepted that two criminal cases are still pending against him. In any event, it is to be noted that this matter was also not placed before the learned Sessions Judge at the time of admitting him to bail during the pendency of the said Sessions Case. As far as accused Alex Fernandes is concerned, it has been

stated by the respondent that Crime No.134/04 under S.381/411 was still pending against him. However, the said accused also has filed an affidavit and has stated that he has been acquitted in the said crime and that no other case is pending against him.

7. Considering the facts and circumstances of this case including the fact that the accused has undergone part of the sentence and was on bail during the period of trial of the Sessions Case against them, this would be a fit case to suspend the sentence imposed upon them by the Addl. Sessions Judge by his Judgment/Order dated 21/27.7.05 and order the release of both the said accused upon execution of a Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Addl. Sessions Judge, Margao and with a further condition that during the pendency of the appeals filed by the said accused, the said accused shall not change their residence from the addresses given by them in the cause title of the Sessions Case without the prior permission of the learned Addl. Sessions Judge, Margao. Order accordingly.

Authenticated copy to be expedited.

N. A. BRITTO, J.

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